

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

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WRIT PETITION NO. 13026 OF 1996

BETWEEN:

Davuluri Venkatasubba Rao & others

.....**Petitioners**

And

Assistant Divisional Engineer,
A.P. State Electricity Board,
Tenali, Guntur District.

.....**Respondent**

:: O R D E R ::

Counsel for the Petitioner : Shri Movva Chandra
Sekhar
Rao

Counsel for the Respondent : Shri G.V. Raghava Reddy
for Shri M. Sreeramulu
Reddy

Dated: 28.06.2006

The petitioners, who are operating cable television network
in Pedaravuru, Tenali, Angalakuduru and Chinaravuru villages and

have been unauthorizedly using the property i.e., electric poles belonging to erstwhile Andhra Pradesh State Electricity Board (for short 'the Board'), have filed this petition for issue of writ of prohibition restraining Assistant Divisional Engineer, Andhra Pradesh State Electricity Board, Operation, Tenali, Guntur District (respondent herein), his men and agents from interfering with the cable wires fixed on the electric poles.

In the affidavit filed by petitioner No.1 Devuluri Venkata Subba Rao it has been averred that the petitioners are operating cable television network in the four villages for last about four years and for this purpose they have been using electric poles in the streets belonging to the Board without any objection. It has been further averred that the respondent has, without any tangible cause, issued notice dated 27-6-1996 for removal of the cable wires from the electric poles. The petitioners have questioned the notice by claiming that the action of the respondent is discriminatory and violative of Article 14, 19 (1)(g) and 21 of the Constitution of India.

Although the writ petition has remained pending for last more than ten years, the respondent has not bothered to file counter-affidavit. Sri G.V.Raghava Reddy appearing for Sri M. Sreeramulu Reddy, Advocate for the respondent requests that the Court may adjourn the case to enable the successor of the Board i.e., A.P.Transco to file counter-affidavit, but I do not find any justification to entertain this belated request.

Sri Movva Chandra Sekhar Rao, learned counsel for the petitioners argued that the impugned notice should be declared as arbitrary and violative of the petitioners fundamental right to equality and right to carry on business guaranteed under Article 14 and 19 (1) (g) of the Constitution, because they have been using

the electric poles for the last four years for carrying cable network without any objection from the authorities of the Board. Learned counsel emphasized that failure of the respondent and other authorities of the Board to raise any objection against the use of electric poles for cable network amounts to implicit consent and, therefore, the petitioners cannot be asked to dismantle the cable network. Learned counsel then submitted that even if the Court finds that the petitioners do not have any legal or vested right to continue to use electric poles, the impugned notice should be declared as discriminatory because similar action has not been taken against other cable network operators.

In the context of the averments contained in the affidavit of petitioner No.1 and the arguments of the learned counsel, I asked him to show any document or other evidence from which it can be inferred that the competent authority of the Board had authorized the petitioners to use the electric poles for cable network. In reply, learned counsel stated that no such permission has been granted by any authority. He, however, reiterated that the omission of the Board authorities to object to the use of electric poles for cable network should be construed as implied consent. In my view, the petitioners do not have any right, much less a vested right, to use electric poles belonging to the Board for carrying their business as cable network operators. The Board is a statutory body established under the Electricity (Supply) Act, 1948. The electric poles installed by the Board for transmission of electricity constitute public property and, in the absence of any authorization by the competent authority, the petitioner cannot use the same for their business purposes. I am further of the view that omission of the Board authorities to object to the use of electric poles for cable network cannot be interpreted as an implied consent and the Court cannot issue a writ to legalise unauthorized

use of public property.

The plea of discrimination raised on behalf of the petitioners is liable to be rejected for two reasons. Firstly, the affidavit filed in support of the writ petition lacks material particulars. The deponent has not given the details of cable operators, who are said to have been allowed to use electric poles. The date on which permission is said to have been granted to other cable operators to use the electric poles has not been disclosed. In the absence of these basic particulars, it is not possible to record a finding that the petitioners have been subjected to hostile discrimination. Secondly, even if it is assumed for a moment that some other cable operators have been allowed by some functionary of the Board to illegally use the property of the Board for his or its business purposes, such illegal user of the public property cannot be made a ground for invoking the doctrine of equality enshrined in Article 14 of the Constitution.

Article 14 of the Constitution of India which is genus of the doctrine of equality declares that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. In the last 55 years, the Courts have given different dimensions to the doctrine of equality so as to bring every arbitrary action of the State and its functionaries within the ambit of the Court's power of judicial review. The ever expanding horizon of the equality clause has also encouraged filing of large number of petitions in which the petitioners seek relief solely on the premise that in the case of some other person the public authority has given relief. Till recently, the Courts had enforced equality clause and entertained the claim of such petitioners without going into the question whether the action taken by the State and/or public authority in the other case or order passed in

favour of some other person is in consonance with law. But this trend has been reversed by the judgments of the Supreme Court in **Chandigarh Administration v. Jagjit Singh, AIR 1995 SC 705, Secretary, Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35, Gursharan Singh v. New Delhi Municipal Committee, (1996) 2 SCC 459, Faridabad CT. Scan Centre v. D.G. Health Services, (1997) 7 SCC 752 and Style (Dress land) v. Union Territory, Chandigarh, (1999) 7 SCC 89.**

The facts of **Jagjit Singh's** case were that the respondents who had given the highest bid for 338 sq. yds plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to

Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:-

“We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the

respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).”

In Secretary Jaipur Development Authority vs. Daulat

Mal Jain (supra), the Supreme Court held as under:

“The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts.”

In **Gursharan Singh v. New Delhi Municipal Committee** (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

“Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner.

Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law.”

In Faridabad CT. Scan Centre v. D.G. Health Services

(supra), the three Judges Bench of the Supreme Court overruled the earlier decision of the two Judges Bench and held:

“Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. “

By applying the ratio of aforementioned judgments to the facts of this case, I hold that the plea of discrimination raised by the petitioners is without substance and a writ of mandamus cannot be issued to the respondent or any other authority of the Board or its successor, namely, A.P. Transco to allow continued use of electric poles by the petitioners for fixing cable wires. As a corollary to this, the petitioners’ prayer for quashing notice dated 27-6-1996 issued by the respondent is liable to be rejected.

In the result, the writ petition is dismissed. The interim order passed by the Court stands automatically vacated. For illegal use of the property belonging to the erstwhile Board, each of the petitioners shall pay cost of Rs.10,000/- to the A.P.Transco Ltd., which now owns the electric poles laid by the Board. The amount of cost shall be deposited with the Secretary, A.P.Transco Ltd., within one month from today. If the amount is not deposited,

the Secretary, A.P. Transco must file appropriate application before this Court for institution of proceedings under the Contempt of Courts Act, 1971. He is also required to send a report to this Court at the end of six weeks period whether or not the petitioners have deposited the amount of cost.

G.S.SINGHVI, CJ

Ksld/svs
28.06.2006